

(D) REMARKS

I. Issue

The sole issue raised in the current Office Action is whether all claims of the present application (hereinafter TRIOLA) is anticipated under 35 U.S.C. 102(e) by co-pending U.S. Pat. Appln. 09/785,254, filed by Richard A. Graff, Chicago II, Feb. 16, 2001, published Apr. 18, 2002 (hereinafter Graff). The Action chain-cites from Graff's 345 pages only,

"...fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280..."

against each claim (see Action, Para. 3-16) .

II. Rules of Law

The rules of law are clear. Statute 35 U.S.C. 101 requires issuance of a patent for,

"...any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof...."

A valid rejection on the ground of anticipation requires the disclosure in a single prior art reference **of each element of the claim** under consideration. Soundscriber Corp. v. U.S., 148 USPQ 298, 301 (1966); In re Donohue, 226 USPQ 619, 621 (Fed. Cir. 1985). Emphasis added.

The Title 35, Sect 131 requires:

"...if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor."

III. Prior Responses to Prior Office Actions

The current Office Action states, at Page 2, under the Examiners "Response to Arguments," "Applicant's arguments...are moot in view of the new ground(s) of rejection."

1 Applicant disagrees. Applicant's immediately previous response, mailed April 23, 2004, to a
2 prior non-final Office Action, and in remarks, responses and arguments prior thereto, have
3 attempted to educate the Office with respect to the difference between real estate escrow office
4 processes and procedures, which lie at the heart of TRIOLA, and the many and various other
5 forms of real estate or personal property related processes and systems. The previously relied
6 upon references in this RCE, viz. Raveis Jr. and Broerman, while described using similar terms-
7 of-art, have been proven by the present applicant to be different in fact from TRIOLA and were
8 withdrawn by the Office. Co-pending Graff is simply another one of these other forms of
9 property-related processes or systems. Therefore, applicant's prior Remarks and evidence
10 submitted are very relevant here also and are incorporated by reference in their entirety.

11
12 The TRIOLA disclosure and claims do not correlate to Graff as relied upon by the Office nor
13 anywhere in the specification by Graff in its entirety. Neither do the TRIOLA claims cover the
14 Graff claims for many reasons. The following further evidence from the Graff published
15 application itself is *in its own words* proof thereof and, therefore, TRIOLA's application should
16 be allowed.

17 18 IV. General Lack of Anticipation

19
20 The text paragraphs relied upon by the Office are unequivocally only verbatim copies of
21 commercially available contract forms that Graff provides merely, in his own word, as
22 "specimens." These slavishly copied, form contracts are not a detailed description of Graff's
23 alleged invention. Submitted herewith as Exhibit TRIOLA RPA-CA is a similar such contract as
24 evidence that Graff merely copied a similar form into his patent application.

25
26 In fact, as will be demonstrated beyond question herein, Graff is only concerned about a *system*
27 *and method for financially analyzing a mere proposal to decompose property into separately*
28 *valued components.*

29
30 No anticipation of the functions/duties that are performed by an escrow agent in a real estate
31 transaction, from opening to a successful closing, as understood by TRIOLA in conception of

1 the present invention. TRIOLA in prior responses has provided extensive educational materials
2 to the Office in this regard.

3
4 Nothing in Graff discloses, suggests, nor motivates the TRIOLA claims, namely in general that the
5 duties/functions performed by a real estate escrow agent in a post buy-sell contract could be completed
6 electronically such as, e.g., via the Internet.

7
8 V. Specific Lack of Anticipation

9
10 A. The Fields of Invention are Divergent

11
12 First, note carefully that the problem Graff is addressing is in the field of ***analyzing financial***
13 ***worth for divided properties***. For example, Graff, *in his own words*, describes only (emphases
14 added):

15
16 "COMPUTING TO SUPPORT ***DECOMPOSING PROPERTY INTO SEPARATELY***
17 ***VALUED COMPONENTS***" (title);

18
19 and,

20
21 "...manipulating digital electrical signals ***to produce an illustration of a***
22 ***decomposition of property into separately valued components.***" (abstract);

23
24 and further,

25
26 "...the input data characterizing ***at least two components decomposed from the***
27 ***property...***" (abstract);

28
29 and still further, noting that in Graff's Fig. 1, specifically relied upon in the Action, there is shows
30 a single bounding box titled:

1 **"DECOMPOSING PROPERTY INTO TWO COMPONENTS: AN ESTATE FOR YEARS**
2 **AND A REMAINDER INTEREST.";**

3
4 and yet again, by Graff's own admission, his concern is,

5
6 "More particularly, this invention relates to a computer system for supporting **a financial**
7 **innovation involving the securitization of property by its decomposition into at**
8 **least two components**. One component can be an estate for years component and a
9 second component can be a remainder interest. The computer system **computes the**
10 **respective values and investment characteristics of the components**, and produces
11 documentation thereof, **to facilitate financial transactions involving the separate**
12 **components.**" (Graff Page 1, partial para. [0002]; see also para. [0019] et seq. to the
13 same effect),

14
15 In Graff's own words, the problem being addressed is that in advance of any actual title transfer
16 transaction,

17
18 "[0052] In general, determining a schedule of economic benefits associated with various
19 equity interests in the entity, valuing the tax deductions associated with the components,
20 and pricing of the components as fixed-income securities, are computation-intensive
21 procedures."

22
23 Graff's para. [0053] - [0066] listing objects of the invention, define in his own words that he is
24 seeking to automate this *pre-transfer transaction analysis, e.g.*,

25
26 "[0068] ...to compute the following: (1) the optimal choice of the estate for years term to
27 maximize profitability of the components; (2) whether risk characteristic of either
28 component are appropriate for inclusion in a prospective investor's portfolio; and if so,
29 (3) whether an **expected** return **justifies** the system-determined purchase price."
30 (Emphasis added.)

31
32 Additionally, to the same effect, in one of the specifics relied upon by the Office,

1 “[0071] FIG. 1 is a graphic representation of *a separated purchase transaction* in
2 accordance with the present invention.” (Emphasis added.)

3
4 And, in para [0085], Graff further admits that,

5
6 “FIG. 1 illustrates *the nature of the financial innovation that gave rise to the need* for
7 the computer system and methods of the present invention.” (Emphasis added.)

8
9 Apparently, Graff should label his FIG. 1 “(Prior Art)” as he admits it is not part of his invention
10 but is merely a known “financial innovation.” That “financial innovation” is by definition, pre-
11 transfer analysis, *supra*. By his own words, Graff’s alleged invention description does not start
12 until para. [0117],

13
14 “...a computer system for manipulating digital electrical signals *to produce an illustration*
15 *of a decomposition of property* into separately valued components.” (Emphasis added.)

16
17 Obviously the problems and objectives are clear from this small sampling of Graff’s own
18 admissions at the outset of his co-pending application; the present applicant can continue cite
19 many more such distinguishing paragraphs defining the immateriality of Graff and reserves the
20 right to do so. But the point has been made inextricably. Over and over, Graff’s own words
21 prove he is focused on the *financial problems and analysis related to a dividing a property into*
22 *separate legal constructs* and only describes an alleged invention related thereto. Those skilled
23 in the art know that these are *financial analysis processes and procedures taken by prudent*
24 *potential purchasers prior to executing a contract for purchase*. These are not related to
25 escrow office processes and procedures post-contract execution. In other words, such financial
26 analysis is by definition a pre-purchase-and-sale contract analysis, and purchase-sale contracts
27 are prerequisite even to looking for an escrow company to handle subsequent activities leading
28 to finalization of a purchase-sale and title transfer between seller and buyer. Thus, by definition,
29 this has no relationship to TRIOLA’s described invention and claims thereto.

1 Graff, at page 6 (emphases added), continuing his "BRIEF DESCRIPTION OF THE
2 DRAWINGS...", presents a description of later included copies of "financial documents" which
3 describe some known constructs for "decomposed" properties:

4
5 "[0080] Specimen 3 is an example of a financial document for an *estate for years*
6 *real estate component...*";

7 "[0081] Specimen 4 is an example of a financial document for a *remainder* real estate
8 *component...*";

9 "[0082] Specimen 5 is an example of a financial document for securitization of a
10 *remainder* real estate *component...*";

11 "[0083] specimen 6 is an example of a financial document for securitization of a
12 *remainder* real estate *component...*"

13
14 By definition these types of documents are legal documents for known manners of breaking up
15 a property. An "estate for years" is a legal construct generally part of Probate Law which gives
16 the holder a limited property right, the most common is an "estate for life":

17
18 "Definition: [n] (law) an estate whose duration is limited to the life of the person holding
19 it" See e.g., www.hyperdictionary.com/search.aspx?define=estate+for+life,

20
21 wherein the rest of the legal rights with respect to the broken property are known as the
22 "remainder." In other words, a person/holder may wish to live on a property for their life, or a
23 given number of years, but have the "remainder" rights automatically pass to the other parties to
24 the contract - - e.g., heirs, beneficiaries, or the like - - upon the estate holder's death or
25 expiration of the term.

26
27 Note additionally that Graff's paragraphs [0080] - [0083] point out that his "specimens" are
28 mere examples of "financial documents" which are,

29
30 "...constructed based on data in the data table and by means of the computer system, in
31 accordance with the present invention."

1 By Graff's own definition, these are merely "specimens" of output documents which incorporate
2 the pre-transaction financial analysis data. In other words, the Graff "specimens" are mere
3 samples of financial documents and not detailed descriptions of Graff's alleged invention at all.
4

5 Obviously, neither Graff nor anyone else can claim to have invented business forms per se such
6 as the "specimens" which are incorporated verbatim by Graff. Thus, neither can it be argued
7 that a mere slavish verbatim copying of such well known legal forms into a patent application
8 constitutes details describing the alleged invention itself of that application.
9

10 Each of the Office's chain-cited paragraphs from Graff - - viz., 0854-0861, 0866, 1162, 1205,
11 1219, 1260, 1280 - - in fact are merely paragraphs of his specimens. The fact that the Graff
12 "specimen(s)" contain well known terms-of-art like "escrow" or "escrow agent" or the like, are
13 serendipitous rather than a teaching of invention or even a suggestion related to TRIOLA. The
14 application of one to the other is a matter of speculative interpretation of Graff's contract
15 "specimens" to try to force-fit TRIOLA into its metes and bounds.
16

17 As examples, on page 94, (0854-0856) Graff merely copies some standard language of a form
18 contract agreement as it relates to some escrow agent instruction agreed upon by both the
19 proposed lessee and lessor. Nothing in such a form contract is evidence that Graff
20 contemplates that the functions/duties of the escrow agent will then be carried out electronically,
21 e.g., over the Internet. Also on page 94, (0857) Graff merely copies contract language
22 regarding one aspect of a role of the escrow agent, i.e., "...acts hereunder as a depository
23 only...". Continuing on page 94, (0858), the specimen continues to limit the scope of
24 duties/functions that are normal of the escrow agent in order to complete a proposed real estate
25 transaction; again, as a mere copy of form contract clauses, it does not anticipate that an
26 escrow agent could perform his/her functions/duties electronically over the Internet. On page
27 95,(0859-0877), Graff continues to cite standard lease agreement language that sets out
28 instructions by which escrow agent must adhere to, but nowhere anticipates nor provides a
29 method to enable escrow agent to perform functions/duties to open and close a real estate
30 transaction over the Internet. On page 130, beginning with (1155), there is merely standard
31 language of a contract to buy/sell real estate between buyer and seller. This agreement is
32 negotiated and executed prior to the opening of escrow. The primary functions/duties of a real

1 estate escrow agent is to carry out the terms and conditions set out in such purchase/sale
2 agreement.

3
4 Moreover, these facts regarding the contract "specimen" language also evidence a basic
5 difference which is directly in opposition to the purpose of Mr. Triola's invention which provides
6 computer automation to accomplish the post-purchase-and-sale-contract transfer of a *complete*
7 real estate property right, title and interest from a seller to a buyer.¹ Clearly, it is common sense
8 that a conscientious person would not contract to buy a property and then open an escrow on a
9 property that one has not made a thorough financial investigation regarding. Graff is concerned
10 with computerization of pre-contract and pre-escrow type *property valuation analysis*. In fact, by
11 definition these processes would be undertaken pre-segregation. Thus, in conclusion, it is clear
12 that Graff's intent in his own words is "financial analysis" for a "decomposition of property." This
13 is patently different than the complete legal transfer of free title to a complete property via real
14 estate escrow office processes, procedures, and systems as in the Detailed Description of
15 TRIOLA.

16
17 It is respectfully submitted that the rejections should be withdrawn on this ground.

18
19 B. The Graff Reference Evidences a Lack of Knowledge Regarding Escrow Company
20 Jurisdictions

21
22 As shown above, on its face the Graff reference is not related to real estate escrow processes
23 and systems. This is an exact same consideration as was demonstrated in the immediately
24 previous RCE Amendment 3 documents (filed 04/22/04), including EXHIBIT NO. 1, filed by
25 inventor Triola and specifically noted with respect the previously cited Broerman reference.
26 Graff is a resident of Illinois (Graff, cover (76)) which, like Broerman's Ohio, *does not use*
27 *escrow companies*. See said EXHIBIT NO. 1, page 3 of 8; and see again specifically to the
28 contrary, Alaska, California, Hawaii, Idaho, Kansas, Montana, New Mexico, Oregon, and
29 Washington, where *escrow companies* for conducting the title transfer processes and

¹ Neither can the Office now allege Graff as supporting a rejection under Sec.103; proceeding contrary to the wisdom of the prior art is "strong evidence" of non-obviousness. W.L. Gore & Assoc., Inc. V. Garlock, 220 USPQ 303 (CA FC 1983).

1 procedures are specifically mentioned. It is also a logical assumption that Graff did not know
2 about post buy-sell contract, transaction-handling escrow companies nor their duties,
3 obligations or services.

4
5 In other words, the basic foundation of the Graff disclosure by its own focus relates to financial
6 analysis for *determining the advisability of division of property*., prior to entering contractual
7 obligations, namely using one of his "specimens" to do so. This is in legal fields of Probate and
8 Tax Law, not real property title transfers and most certainly not Triola's computerization of
9 escrow company office processes, procedures, and systems related thereto.

10
11 Thus, again there is no actual correlation of the TRIOLA claimed invention to Graff because it is
12 likely Graff never considered real estate escrow companies nor what services they perform in a
13 title transfer nor the inherent problems related thereto. This is evidence of Graff's approaching
14 a problem from the viewpoint of a "financial analyst," not from the viewpoint of a post-sale
15 contract concerned "escrow company" or an "escrow officer" such as in TRIOLA. Any other
16 interpretation of Graff is an extrapolation toward arguing inherency.²

17
18 Again, the reference fails to stand for a proposition asserted. It is respectfully submitted that the
19 rejections must be withdrawn on this ground.

20
21 C. Graff's Focus is Directed to Different Computing Techniques

22
23 Taken as a whole, it is clear that Graff's intention, in his own words (emphases added), is to
24 create and describe systems and methods related to partitioned properties and
25 "...*computerizing the calculations...*" for:

26
27 "...**taxation** for the components." (abstract);

² In In re Newell, 13 USPQ2d 1248, 891 F.2d 899 (Fed. Cir. 1989) the court explicitly stated that:

"[A] retrospective view of *inherency* is not a substitute for some teaching or suggestion which supports the selection and use of the various elements in the particular claimed combination." (At 1250, emphasis added.)

1 and, as shown in Graff Fig. 4A-4B, he is concerned only with the computerization (flow chart
2 elements) specifically concerned with *pre-property division financial analysis issues* via the
3 nature of the shown inputs, outputs, and computations, regarding such concepts as:

4
5 "INPUT: **TAX BRACKET** OF ESTATE FOR YEARS PURCHASER" (82, emphasis
6 added),

7 "OUTPUT TREASURY **BOND YIELD...**" (80, emphasis added),

8 "...ESTATE FOR YEARS PURCHASER **TAX BRACKET...**" (84, emphasis added);

9 "...NET **RENTAL PAYMENT...**" (88),

10 "...RENTAL PAYMENTS DISCOUNTED AT RENTAL INCOME **YIELD RATE** (90),

11 "...VALUE NOT **DEPRECIABLE** (112),

12
13 and the like, the continued listing of which merely belabors the point. See also, all Graff Figs.

14
15 The Graff Figs. are replete with evidence in Graff's words of his solution to the problem of
16 "financial transactions involving the separate components" of a property. Thus, over-and-over
17 Graff himself admits that the fundamental purpose of his invention is to calculate a valuation for
18 different pieces of a property being considered for division into separate legal constructs in
19 order

20
21 "...to facilitate financial transactions involving the separate components.***" (Col. 1,
22 para. [0002]),

23
24 and the computerization of that financial analysis process. This is not TRIOLA's problem
25 needing resolution nor his claimed invention.

26
27 In fact, it must be noted that nothing in any of the drawings or specimens of Graff suggests or
28 motivates what is perhaps most clearly demonstrated by TRIOLA's drawings, showing an
29 computerization of escrow office process and procedures. While using some similar language
30 as the present application, a careful reading of Graff finds only *financial analysis* concepts. That
31 is not the business of an escrow office, it is the business of "tax analyst(s)" and an "insurance
32 company" (see Graff Fig. 6), property appraisers, tax assessors, market analysts, or the like, as

1 would be known to those skilled in the art. The reference fails to stand for propositions asserted
2 by the Office. It is respectfully submitted that the rejections must be withdrawn on this ground.
3

4 VI. Claims Comparison

5

6 The allegations under Sec. 102, consisting merely of near-verbatim copying of TRIOLA's claims
7 followed by chain of citation of pieces of Graff as material and anticipatory of TRIOLA, is
8 sustainable under the law or the *Soundsciber* test, *supra*. No explanation is given by the Office
9 as to how to tie the claim language is anticipated by the each of the pieces of Graff relied upon.
10

11 Highlighting appropriate terms of the allegations, and keeping in mind the already described
12 sections and language of Graff himself which contradict these allegations, there is nothing in
13 Graff to support the prime allegations against TRIOLA's first independent claim 4 that,
14

15 "...Gaff [sic] teaches a *web based-server* computer system *for escrow office related*
16 *processes of real estate title transfer...*" (Action, page 2, para. 3, first sentence,
17 emphases added),
18

19 against independent claims 11 and 17 that,
20

21 "...Gaff [sic] teaches a computerized, *on-line* method for *real estate escrow processes*
22 *performed by an escrow company holding an escrow account...*" (Action, page 4, para.
23 7, emphases added),
24

25 against independent claim 14, that,
26

27 "Gaff [sic] teaches a process for a *computerized escrow transaction...*" (Action, page 4,
28 para. 10, emphasis added),
29

30 against independent claim 15, that,
31

1 "Gaff [sic] teaches a system for *real-time or near real-time escrow transactions...*"

2 (Action, page 5, para. 11, emphasis added),

3
4 against independent claim 16, that,

5
6 "Gaff [sic] teaches a method of *doing business using an internet* comprising:

7 providing an *on-line escrow account...*" (Action, page 5, para. 12, emphasis added),

8
9 nor against independent claim 21, that,

10
11 "Gaff [sic] teaches A [sic] computer based *automation system for escrow processes and*
12 *documentation...*" (Action page 7, para. 16, emphasis added),

13
14 nor against any of the element limitations given in each said independent claim and claims
15 depending therefrom, respectively.

16
17 More specifically as noted above, the [para.]-chained citations Examiner has relied upon as text
18 of the Graff Publication *are not part of the actual description of the alleged Graff invention, but*
19 *are merely, again in Graff's own words, "... an example of a financial document"* Relied
20 upon Para. [0854] - [0861], [0086], are paragraphs of a "specimen," generally which start at
21 para. [0302] and more specifically, subparagraphs of a "[0739] LEASE " commercial document
22 copied verbatim into the Graff patent application and which starts its text in para [0740] thereof.
23 This is *prima facie* not the actual "...description of the invention or discovery and of the manner
24 and process of making and using the same...." 37 CFR 1.71. It follows Graff's own "VI.
25 CONCLUSION," col. 22, of his actual description of invention, see Graff's para. [0302]. These
26 specimens are merely used by Graff, in his own words, to

27
28 "... to reflect the different kind of property being divided. Reflecting these modifications,
29 Data Form 52, of which Screen 1 of Specimen 2 is *an example*, accepts inputs for a tax-
30 exempt security with constant debt service payments. *** [0230] Other Stored Model
31 Financial Document 37 represents *other financial documentation* required to
32 successfully place the securitized components." Emphases added.

1 In other words, Graff element 37 refers to exemplary Specimens 3-6. Relied upon Para. [1162]
2 and [1205] and [1219] are paragraphs of a "specimen" of a purchase and sale agreement used
3 by Graff. Relied upon Para. [1260] and [1280] to EXHIBIT C of the LEASE specimen. In other
4 words, the allegations based on these citation can not be sustained on the basis of TRIOLA's
5 claims versus Graff's own cited paragraphs in the chain citation which merely are bits and
6 pieces of **the exemplary specimens**, not Graff's specification of his alleged invention.

7
8 Furthermore, rather than anticipating the present invention, these hard copy legal document
9 "specimens" in fact prove that Triola has created a new, useful, nonobvious invention. Namely,
10 in one basic aspect, TRIOLA provides a solution to the known manner *manual* handling of
11 particular types of complex legal documents by a real estate escrow office, specifically,
12 documents which are post-Graff (and post-Broerman, and post-Raveis Jr.). Thus the Office
13 itself makes a case for allowance of the present application under 35 U.S.C. 101 and 131,
14 *supra*.

15
16 Looking more closely then at the TRIOLA claims, it is evident that Graff, like Broerman and
17 Raveis Jr., is utterly devoid of evidence proving anticipation of the TRIOLA claims.

18
19 Nowhere does "Graff teach" as in applicant's independent claim 4:

20 "A Web-based client-server computer system for escrow office related processes of real
21 estate title transfer, comprising: ***"

22
23 Nowhere does "Graff teach" as in applicant's independent claim 11:

24 "Computerized, on-line method for real estate escrow processes performed by an
25 escrow company holding an escrow account, the method comprising: ***"

26
27 Nowhere does "Graff teach" as in applicant's independent claim 14:

28 "A computerized process for a computerized on-line real estate escrow office
29 account, the process comprising:

30 providing escrow account data and electronic documents, escrow status,
31 broker status, lender status, buyer status, seller status, and vendor status via a
32 centralized server associated with an escrow officer; and

1 connecting parties to said computerized on-line real estate escrow office account
2 using multiple computer network access devices via connectivity types which include but
3 are not limited to wireless, satellite, dial-up, or leased communications.”
4

5 Manifestly, nowhere does “Graff teach” as in applicant’s independent claim 15:

6 “A system for real-time or near-real-time real estate escrow company account
7 processes and documentation, the system comprising:...”

8 which is followed by a litany of specific individual escrow office centric processes which Graff
9 never considers.
10

11 Nowhere does “Graff teach” anything as in applicant’s independent claim 16:

12 “A method of doing business in realty using on-line communications, the method
13 comprising:

14 providing an on-line escrow account for parties to a transaction;
15 providing on-line transactional account management services with
16 respect to the on-line escrow account for said parties; and
17 providing secure access to said on-line escrow account limited to the
18 parties and third parties using on-line identification authentication.”
19

20 Nowhere does “Graff teach” as in applicant’s independent claim 17:

21 “A computer memory having a program for real estate escrow company accounts
22 comprising:

23 program code providing a client-server based automation system for said
24 real estate escrow company accounts;
25 program code providing implementation, management, tracking,
26 electronic documentation, and closing of specific escrow company accounts; and
27 program code allowing escrow data access only for specific parties to
28 said escrow company accounts.”
29

30 *Prima facie*, nowhere does “Graff teach” as in applicant’s independent claim 21:

31 “A computer based automation system for escrow processes and documentation
32 using Internet computing technology, said system comprising:

1 means for implementing, managing, and tracking real estate transfer and
2 real estate financing processes by and among principal parties and their agents with
3 respect to an escrow company account requiring said processes and
4 documentation; and

5 means for providing data and documents associated with said
6 implementing, managing, and tracking such that said data and documents are
7 accessible to said principal parties thereto and their agents and officers of said escrow
8 company account via Internet.”
9

10 Applicant can make the same case for each dependent claim and reserves the right to do so.
11 However, that is unnecessary as a dependent claim includes all the limitations of the claim from
12 which it depends and, as such, makes specific that which was general. 35 USC 112; 37 C.F.R.
13 Sec. 1.75(c); Allen Group, Inc. V. Nu-Star, Inc., 197 USPQ 849 (7th Cir. 1978); Ex parte
14 Hansen, 99 USPQ 319 (Pat. Off. Bd. App. 1953). Dependent claims are non-obvious if the
15 independent claims from which they depend are non-obvious. In re Fine, 5 USPQ2d 1596,
16 1600 (Fed. Cir. 1988); see also Hartness International, Inc. V. Simplimatic Engineering Co., 2
17 USPQ2d 1826, 1831 (Fed. Cir. (1987) to the same effect re novelty). Thus, allowance of a base
18 claim as patentable normally results in allowance of a claim dependent upon that claim.
19

20 The Action latches onto what are clearly mere terms-of-art in Graff's contract specimens
21 *without regard to the true function thereof as described and understood in Graff's own words*,
22 uses the TRIOLA claims as a template, and alleges anticipation. In addition to being
23 technically unsound, this is approach *prima facie* application-template-hindsight can not
24 succeed.
25

26 Now, even looking beyond those specific chained-citations by the Examiner and to Graff as a
27 whole, as explained above, the problem Graff is addressing is one related to the splitting of a
28 property into multiple legal interests and a pre-splitting financial analysis so that the participants
29 may make an informed decision. See Graff, [0004], "...to increase investment return under
30 conditions of economic stress...;" see also generally, Graff [0005] - [0015]. His goal is
31 undeniably a computerization which provides a "FINANCIAL ANALYSIS OUTPUT" (see Fig. 2,
32 element 24 and terminus output 24 of the final Fig. 6) related to such a potential property

1 division. He unequivocally states in his SUMMARY OF THE INVENTION, page 1: "In response
2 to the above, a *new financial product* has been developed"

3
4 This is not what is described nor claimed by TRIOLA. Applicant incorporates herein by
5 reference all of his previous Remarks and Exhibits in response to previous Office Actions in
6 which applicant explains at length the difference between buy-sell contract negotiations and
7 escrow processes held thereafter. They are not the same process as Graff's "Financial
8 Analysis" (see particularly, Graff Fig. 2 and 6). Nor is Triola concerned with the many sub-
9 topics of Graff related to property division as clearly specified by Graff:

10 "...analyzing property rental versus... (e.g., Graff FIG. 4A, element 76 and element 80),
11 in a property divided between an estate for years interest (e.g., Graff FIG. 4B, 72),
12 and a remainder interest (Graff Fig. 4B, 73),
13 continued to Fig. 4E to present the financial analysis output of "insured value per unit
14 area" (125).

15 Graff's Fig. 5A-1 through 5D-2 makes a similar presentation for "partnership" portfolio analyses
16 (e.g., Fig. 5A-2, element 144).

17
18 In proof that Graff in his own words is undeniably not concerned with, or presumably as shown
19 above not even aware of real estate escrow office functions, Graff's independent claims are for:

20
21 "1. A method for *making financial analysis* output having a computed market-based
22 valuation for property...

23
24 2. A method for *making financial analysis* output including a computed market-based
25 valuation for property...

26
27 3. A method for *making financial analysis* output having a computed market-based
28 valuation for property, the financial analysis being made by the steps...

29
30 9. A method for *making financial analysis* output having a computed market-based
31 valuation for property...

1 57. A method for *making financial analysis* output having a system-determined
2 purchase price for property in consummating a sale, the financial analysis output being made by
3 steps...

4
5 58. . A method for *making financial analysis* output having a system-determined
6 purchase price for property in consummating a sale, the financial analysis output being made by
7 steps...."

8
9 Even were the claims not so limited, the above quoted Graff Summary would define his
10 invention as limited to the same effect. See e.g., *Gentry Gallery, Inc. v. Berkline Corp.*, 45
11 USPQ2d 1498; *Tronzo v. Biomet, Inc.*, 47 USPQ2 1829; and, *Vehicular Technologies Corp. v.*
12 *Titan Wheel International, Inc.*, 54 USPQ2d 1841.

13
14 As explained at length in response to prior Actions, even a purchase-and-sale agreement, one
15 of Graff's specimens, is a *pre-escrow* legal contract. *It is a prerequisite to opening a file by an*
16 *escrow office*. It will be patently obvious to those skilled in the art, and in fact to a layperson (at
17 the least to those who have purchased a property in a state or country using professional
18 escrow office services), that a proper understanding of financial issues surrounding a property is
19 an essential before entering a purchase-and-sale contract followed by opening an escrow
20 account, the processes and procedures of which are addressed by TRIOLA. Thus, even a
21 general, cursory review of Graff, such for an Office Action response, makes it abundantly clear
22 to those skilled in the art that there is no description of TRIOLA's specification and claims for
23 escrow company centric processes and procedures.

24
25 The claimed inventions are to issues and solutions, as different as apples-and-oranges. When
26 a reference can be deemed material merely because it has used the same terms-of-art as the
27 application under examination, then we will have reached the point of the untimely declaration
28 by the former Director of U.S. Patent Office, Charles H. Duell in 1899:

29
30 "Everything that can be invented has been invented."
31

1 Applicant has shown the immateriality of Graff to the Triola claims. It is respectfully requested
2 that the rejection be withdrawn. Applicant specifically reserves the right to argue each
3 paragraph of the present Action on a point-by-point basis in support of any continuing
4 procedures at the USPTO should the reference not be withdrawn.

5
6 VII. Graff Does Not Fit the Parameters of 35 U.S.C. 102

7
8 Sec. 102(e) is in pertinent part:

9
10 "the invention was described in (1) an application for patent, *published* under section
11 122(b), by another filed in the United States *before the invention by the applicant* for
12 patent, or (2) a *patent granted* on an application for patent by another filed in the United
13 States before the invention by the applicant... ."

14
15 First, not only does Graff not describe Triola's invention as proven hereinabove, the rejection is
16 based on a Publication, not "a patent granted." Therefore, the rejection is, even at best,
17 provisional under 102(e)(2), yet the Office does not so state.

18
19 Secondly, Graff is post-TRIOLA, both in filing and publication date. Triola has submitted
20 Declaration Under Sec 131, which is continued herewith, which evidences invention prior to
21 Graff's filing date of Feb. 16, 2001. See, Graff cover (22).

22
23 Filed herewith is a CONTINUED DECLARATION OF C. RICHARD TRIOLA UNDER 37 CFR
24 1.131, specific to the Graff reference.

25
26 It is respectfully submitted that the rejections must be withdrawn on this ground.

27
28 VIII. Other Procedural Issues and Inequities

29
30 First, this application is under a Grant of a Petition to Make Special, issued by the SPE,
31 Technology Center 2100 on March 22, 2002, yet remains stalled procedurally two-an-a-half
32 years later despite the present applicant's timely and extraordinary efforts to explain the

1 TRIOLA invention and the complete lack of materiality of cited references, and to speed the
2 process. It should also be noted that Mr. Triola himself has submitted several PTO-1449
3 information disclosures including further educational items-of-interest (though each is
4 distinguished and is nonetheless immaterial to the TRIOLA claims). This is not in keeping with
5 the purpose of the Grant of the Petition nor with the MPEP.

6
7 Second, in response to the *seven* Office Actions issued against the present application, Triola
8 has been forced to respond to literal moving-targets-of-rejection generated by the Office via *five*
9 PTO-892 forms, each one different from the previous. Each applied reference has been proven
10 to be immaterial to the claims of Triola. It must be noted that since the first response to the first
11 Office Action, only minor amendments to claims by the Applicant have been made merely to
12 clarify for the Examiner the language describing elements which were already inherently
13 present in the claims in accordance with Slimfold Mfg. Co. v. Kinkead Indus., 810 f.2d 1113, 1
14 USPQ 2d 1563 (Fed. Cir. 1987); Moleculon Res. Corp. v. CBS, Inc., 793 F.2d 1261, 229 USPQ
15 805 (Fed. Cir. 1986), that both claim and specification language must be considered. See also,
16 DMI, Inc. v. Deere & Co., 755 F.2d 1570, 225 USPQ 236 (Fed. Cir. 1985). In fact, it is
17 becoming more clear to the applicant that the lack of material references perhaps entitles Mr.
18 Triola to even broader claims and thus the right to file a Continuation application is expressly
19 reserved hereby.

20
21 Continued, rolling rejections in the manner of these seven Actions is unwarranted and is not in
22 keeping with the law, the regulations, nor the MPEP. MPEP 904.03 (emphases added) instructs
23 an examiner to conduct a

24 "careful and comprehensive search"

25 as a prerequisite to a

26 "speedy and just determination of issues involved in the examination,"

27 and that

28 "In all references considered...the examiner should study the specification or description
29 sufficiently to determine the full value of the reference disclosure relative to the claimed
30 or claimable subject matter."

1 It is clear that the repeated application under Sec. 102 of references which merely have the
2 same terms-of-art but which are patently immaterial to TRIOLA's claimed subject matter is not a
3 "just" examination. The lack of study and application has resulted in a lengthy, rather than
4 "speedy" prosecution. By application of immaterial references, the Office ignores the reasoning
5 of MPEP 904.03 in that it,

6 "...adds to the burden and cost of prosecution...,"
7 ignoring the both the proscription and the immediately following mandate,
8 "and *should therefore be avoided*."
9

10 Moreover, it is a requirement that an examiner must cite the best prior art references in
11 connection with the examination of pending claims. 37 CFR 1.104(c)(2). Clearly, MPEP
12 707.07(g) instructs that piecemeal examinations are to be avoided, whereby the *first* Office
13 Action should provided *all* appropriate objections and rejections.

14
15 Further, in accordance with MPEP 707.02, the Supervisory Primary Examiner should direct that
16 only the,

17 "... shortest path to a final disposition of an application is by finding the best references
18 *on the first search and carefully applying them.*"

19 The file history shows that this application has had multiple post-first Action searches. Yet, it is
20 also clear from the record that since the first Action reply Mr. Triola has made no amendments
21 changing the scope of the claimed invention such as by incorporating new limitations from the
22 specification into the claims which may have provoked the need for new searches. Moreover, in
23 response to each Action, the Office has been provided with ample educational materials.

24 Therefore, long before this point in the prosecution the repeat of newly-cited immaterial
25 references like Graff which is merely similar to those already applied in a prior Action (e.g.,
26 Broerman and Ravais Jr.) should have been avoided.

27
28 Third, it is a requirement of Reg. 1.104(c)(2) that:

29 "The pertinence of each reference, if no apparent, *must be clearly explained* and each
30 rejected claim specified."

31 An Action which makes no explanation other than to paraphrase each of applicant's claims and
32 to append thereafter a chain-cite of mere references to parts of Graff fails to meet this rule. At

1 the least, each specific cite should be in some proximity to the element to which it relates.
2 Otherwise, applicants are left to guess at the thought process behind the examination and
3 application of the reference. Moreover, in this specific case, despite the copious educational
4 materials and prior Remarks and arguments submitted by Triola, no explanation, no
5 argumentative reasoning, of how applied Graff's Fig. 1 or chain-cited language of his exemplary
6 "specimens" is so applicable is offered at all. In other words, applicant is left to speculate as to
7 fitting the presented puzzle parts together with applicant's claims.

8
9 Moreover, the very format of this rejection - - quoting a claim and following the quote with a
10 chain of applied reference citations - - is *prima facie* hindsight reasoning *using the invention* for
11 which a patent is sought as a *template*. This is impermissible.³

12
13 Fourth, an lastly, it is noted for the record that this application seemingly should be entitled to
14 adjustment of patent term under 37 CFR Subpart F. Triola is under a granted Petition to Make
15 Special. Applicant has proven to be totally immaterial all the references cited by the Office,
16 namely, the teachings on ATM machines (Martin) and pre-escrow buyer-seller centric systems
17 (Ravais and Broerman), and pre-purchase-and-sale-contract financial analysis (Graff) which
18 even may be categorized as "pre-pre-escrow buyer-seller centric systems." The applicant's
19 obvious concern is had he not had to Remark over now-retracted, patently immaterial,
20 references, that this application would have been allowed years ago. Applicant was forced to
21 file an RCE because of such immaterial references (Martin), and since has still had to address
22 immaterial references such as Graff, which is concerned with technical problems that are
23 obviously even pre-Ravais and pre-Broerman. But for such inequitable examinations and re-
24 examinations, applicant's case would likely have been granted long prior to publication of these
25 co-pending references.

26
27 No substantive alteration of the scope of the previously presented claims was required nor
28 entered because, as proven by the present applicant, none of the cited references have set
29 forth material prior art. Mr. Triola consistently has presented claims and clarification
30 amendments which are directed to novel, unobvious and distinct features of the present

³ Texas Instruments, Inc. v. ITC, 26 USPQ2d 1018 (CA FC 1993).

1 invention which are an advancement to the state of the art. Both on the technical merits and on
2 procedural inadequacies, the present Action fails against the TRIOLA application. Withdrawal
3 of all rejections is respectfully requested.

4
5 VIX. Summary & Conclusion
6

7 The evidence of Graff's own words that the problem he was considering was related to
8 computerization of "...*financial transactions involving the separate [property] components...*"
9 and that the outcome of Graff's described method and system is a "Financial Analysis Output"
10 (24 Fig. 6) is overwhelming. This is not the invention described nor claimed by Triola. Graff
11 utterly fails under the legal test of the Soundsciber case, supra, and is immaterial. Thus it is
12 undeniable that not only does Graff not contain any inventive teaching on real estate escrow
13 process innovation, the TRIOLA claims as previously presented contain many elements neither
14 disclosed nor even suggested nor motivated by Graff's described financial analysis for
15 partitioning property.

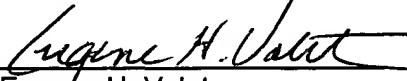
16
17 Reconsideration and a Notice of Allowability should issue forthwith in compliance with the Grant
18 of the Petition to Make Special and the equities of the case.

19
20 The right is expressly reserved to reassert any and all arguments, including the raising of new
21 arguments, and the filing of appropriate continuing procedures at the USPTO, should a Notice
22 of Allowance not be forthcoming.
23
24

1 Questions or suggestions that will advance the case to allowance may be directed to the
2 undersigned by teleconference at the Examiner's convenience.

3
4 Date: OCT. 7, 2004

Respectfully submitted,
C. Richard Triola,


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Attorney Reg. No. 31435
(425) 672-3147 Ⓜ fax 640-0525

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CALIFORNIA
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**CALIFORNIA
RESIDENTIAL PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**
For Use With Single Family Residential Property — Attached or Detached
(C.A.R. Form RPA-CA, Revised 10/02)

FORM RPA-CA

Date _____, at _____, California.

1. OFFER:

- A. THIS IS AN OFFER FROM** _____ ("Buyer").
B. THE REAL PROPERTY TO BE ACQUIRED is described as _____, Assessor's Parcel No. _____, situated in _____, County of _____, California, ("Property").
C. THE PURCHASE PRICE offered is _____ Dollars \$ _____

D. CLOSE OF ESCROW shall occur on _____ (date) (or ☐ _____ Days After Acceptance).

2. FINANCE TERMS: Obtaining the loans below is a contingency of this Agreement unless: (i) either 2K or 2L is checked below; or (ii) otherwise agreed in writing. Buyer shall act diligently and in good faith to obtain the designated loans. Obtaining deposit, down payment and closing costs is **not a contingency**. Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT:** Buyer has given a deposit in the amount of _____, by personal check (or ☐ _____), made payable to _____, which shall be held uncashed until Acceptance and then deposited within 3 business days after Acceptance (or ☐ _____), with Escrow Holder, (or ☐ into Broker's trust account).

- B. INCREASED DEPOSIT:** Buyer shall deposit with Escrow Holder an increased deposit in the amount of _____ \$ _____ within _____ Days After Acceptance, or ☐ _____ \$ _____

C. FIRST LOAN IN THE AMOUNT OF _____ \$ _____

- (1) NEW First Deed of Trust in favor of lender, encumbering the Property, securing a note payable at maximum interest of _____% fixed rate, or _____% initial adjustable rate with a maximum interest rate of _____%, balance due in _____ years, amortized over _____ years. Buyer shall pay loan fees/points not to exceed _____. (These terms apply whether the designated loan is conventional, FHA or VA.)

- (2) ☐ FHA ☐ VA: (The following terms only apply to the FHA or VA loan that is checked.)
Seller shall pay _____% discount points. Seller shall pay other fees not allowed to be paid by Buyer, ☐ not to exceed \$ _____. Seller shall pay the cost of lender required Repairs (including those for wood destroying pest) not otherwise provided for in this Agreement, ☐ not to exceed \$ _____. (Actual loan amount may increase if mortgage insurance premiums, funding fees or closing costs are financed.)

- D. ADDITIONAL FINANCING TERMS:** ☐ Seller financing, (C.A.R. Form SFA); ☐ secondary financing, _____ \$ _____ (C.A.R. Form PAA, paragraph 4A); ☐ assumed financing (C.A.R. Form PAA, paragraph 4B)

- E. BALANCE OF PURCHASE PRICE** (not including costs of obtaining loans and other closing costs) in the amount of _____ \$ _____ to be deposited with Escrow Holder within sufficient time to close escrow.

- F. PURCHASE PRICE (TOTAL):** _____ \$ _____

- G. LOAN APPLICATIONS:** Within 7 (or ☐ _____) Days After Acceptance, Buyer shall provide Seller a letter from lender or mortgage loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for the NEW loan specified in 2C above.

- H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to 2G) shall, within 7 (or ☐ _____) Days After Acceptance, provide Seller written verification of Buyer's down payment and closing costs.

- I. LOAN CONTINGENCY REMOVAL:** (i) Within 17 (or ☐ _____) Days After Acceptance, Buyer shall, as specified in paragraph 14, remove the loan contingency or cancel this Agreement; OR (ii) (if checked) ☐ the loan contingency shall remain in effect until the designated loans are funded.

- J. APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (OR, if checked, ☐ is NOT) contingent upon the Property appraising at no less than the specified purchase price. If there is a loan contingency, at the time the loan contingency is removed (or, if checked, ☐ within 17 (or _____) Days After Acceptance), Buyer shall, as specified in paragraph 14B(3), remove the appraisal contingency or cancel this Agreement. If there is no loan contingency, Buyer shall, as specified in paragraph 14B(3), remove the appraisal contingency within 17 (or _____) Days After Acceptance.

- K. ☐ NO LOAN CONTINGENCY** (If checked): Obtaining any loan in paragraphs 2C, 2D or elsewhere in this Agreement is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

- L. ☐ ALL CASH OFFER** (If checked): No loan is needed to purchase the Property. Buyer shall, within 7 (or ☐ _____) Days After Acceptance, provide Seller written verification of sufficient funds to close this transaction.

3. CLOSING AND OCCUPANCY:

- A. Buyer intends** (or ☐ does not intend) to occupy the Property as Buyer's primary residence.

- B. Seller-occupied or vacant property:** Occupancy shall be delivered to Buyer at _____ AM/PM, ☐ on the date of Close Of Escrow; ☐ on _____; or ☐ no later than _____ Days After Close Of Escrow. (C.A.R. Form PAA, paragraph 2.) If transfer of title and occupancy do not occur at the same time, Buyer and Seller are advised to: (i) enter into a written occupancy agreement; and (ii) consult with their insurance and legal advisors.

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RPA-CA REVISED 10/02 (PAGE 1 OF 8) Print Date BDC Mar 04

Buyer's Initials (_____) (_____)
Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT



Property Address: _____

- C. **Tenant-occupied property:** (i) Property shall be vacant at least 5 (or ☐ _____) Days Prior to Close Of Escrow, unless otherwise agreed in writing. **Note to Seller:** If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.
- OR (ii) (if checked) ☐ **Tenant to remain in possession.** The attached addendum is incorporated into this Agreement (C.A.R. Form PAA, paragraph 3);
- OR (iii) (if checked) ☐ **This Agreement is contingent** upon Buyer and Seller entering into a written agreement regarding occupancy of the Property within the time specified in paragraph 14B(1). If no written agreement is reached within this time, either Buyer or Seller may cancel this Agreement in writing.
- D. At Close Of Escrow, Seller assigns to Buyer any assignable warranty rights for items included in the sale and shall provide any available Copies of such warranties. Brokers cannot and will not determine the assignability of any warranties.
- E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers. If Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.
4. **ALLOCATION OF COSTS** (If checked): Unless otherwise specified here, this paragraph only determines who is to pay for any inspection, test or service mentioned. If not specified here or elsewhere in this Agreement, the determination of who is to pay for any work recommended or identified by any such report, inspection, test or service shall be by the method specified in paragraph 14B(2).
- A. **WOOD DESTROYING PEST INSPECTION:**
- (1) ☐ Buyer ☐ Seller shall pay for an inspection and report for wood destroying pests and organisms ("Report") which shall be prepared by _____, a registered structural pest control company. The Report shall cover the accessible areas of the main building and attached structures and, if checked: ☐ detached garages and carports, ☐ detached decks, ☐ the following other structures or areas _____. The Report shall not include roof coverings. If Property is a condominium or located in a common interest subdivision, the Report shall include only the separate interest and any exclusive-use areas being transferred and shall not include common areas, unless otherwise agreed. Water tests of shower pans on upper level units may not be performed without consent of the owners of property below the shower.
- OR (2) ☐ (If checked) The attached addendum (C.A.R. Form WPA) regarding wood destroying pest inspection and allocation of cost is incorporated into this Agreement.
- B. **OTHER INSPECTIONS AND REPORTS:**
- (1) ☐ Buyer ☐ Seller shall pay to have septic or private sewage disposal systems inspected _____.
- (2) ☐ Buyer ☐ Seller shall pay to have domestic wells tested for water potability and productivity _____.
- (3) ☐ Buyer ☐ Seller shall pay for a natural hazard zone disclosure report prepared by _____.
- (4) ☐ Buyer ☐ Seller shall pay for the following inspection or report _____.
- (5) ☐ Buyer ☐ Seller shall pay for the following inspection or report _____.
- C. **GOVERNMENT REQUIREMENTS AND RETROFIT:**
- (1) ☐ Buyer ☐ Seller shall pay for smoke detector installation and/or water heater bracing, if required by Law. Prior to Close Of Escrow, Seller shall provide Buyer a written statement of compliance in accordance with state and local Law, unless exempt.
- (2) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing escrow under any Law. _____.
- D. **ESCROW AND TITLE:**
- (1) ☐ Buyer ☐ Seller shall pay escrow fee _____.
- Escrow Holder shall be _____.
- (2) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 12E _____.
- Owner's title policy to be issued by _____.
- (Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)
- E. **OTHER COSTS:**
- (1) ☐ Buyer ☐ Seller shall pay County transfer tax or transfer fee _____.
- (2) ☐ Buyer ☐ Seller shall pay City transfer tax or transfer fee _____.
- (3) ☐ Buyer ☐ Seller shall pay HOA transfer fee _____.
- (4) ☐ Buyer ☐ Seller shall pay HOA document preparation fees _____, of a one-year home warranty plan.
- (5) ☐ Buyer ☐ Seller shall pay the cost, not to exceed \$ _____, issued by _____ with the following optional coverage: _____.
- (6) ☐ Buyer ☐ Seller shall pay for _____.
- (7) ☐ Buyer ☐ Seller shall pay for _____.
5. **STATUTORY DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:**
- A. (1) Seller shall, within the time specified in paragraph 14A, deliver to Buyer, if required by Law: (i) Federal Lead-Based Paint Disclosures and pamphlet ("Lead Disclosures"); and (ii) disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the California Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act and Improvement Bond Act of 1915) and, if Seller has actual knowledge, an industrial use and military ordnance location disclosure (C.A.R. Form SSD).
- (2) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory and Lead Disclosures to Seller.
- (3) In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.

Buyer's Initials (____)(____)
Seller's Initials (____)(____)

Reviewed by _____ Date _____

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 6 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)

- (4) If any disclosure or notice specified in 5A(1), or subsequent or amended disclosure or notice is delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days** After delivery in person, or **5 Days** After delivery by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent. (Lead Disclosures sent by mail must be sent certified mail or better.)
- (5) **Note to Buyer and Seller: Waiver of Statutory and Lead Disclosures is prohibited by Law.**
- B. **NATURAL AND ENVIRONMENTAL HAZARDS:** Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- C. **DATA BASE DISCLOSURE: NOTICE:** The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.
6. **CONDOMINIUM/PLANNED UNIT DEVELOPMENT DISCLOSURES:**
- A. **SELLER HAS: 7 (or ☐ _____) Days** After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned unit development or other common interest subdivision (C.A.R. Form SSD).
- B. If the Property is a condominium or is located in a planned unit development or other common interest subdivision, Seller has **3 (or ☐ _____) Days** After Acceptance to request from the HOA (C.A.R. Form HOA): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3).
7. **CONDITIONS AFFECTING PROPERTY:**
- A. Unless otherwise agreed: (i) the Property is sold (a) in its **PRESENT** physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
- B. **SELLER SHALL, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, AND MAKE OTHER DISCLOSURES REQUIRED BY LAW (C.A.R. Form SSD).**
- C. **NOTE TO BUYER:** You are strongly advised to conduct investigations of the entire Property in order to determine its present condition since Seller may not be aware of all defects affecting the Property or other factors that you consider important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
- D. **NOTE TO SELLER:** Buyer has the right to inspect the Property and, as specified in paragraph 14B, based upon information discovered in those inspections: (i) cancel this Agreement; or (ii) request that you make Repairs or take other action.
8. **ITEMS INCLUDED AND EXCLUDED:**
- A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in 8B or C.
- B. **ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) Existing electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, private integrated telephone systems, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water softeners, water purifiers, security systems/alarms; and
- (3) The following items: _____
- (4) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.
- (5) All items included shall be transferred free of liens and without Seller warranty.
- C. **ITEMS EXCLUDED FROM SALE:** _____
9. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- B. Buyer shall complete Buyer Investigations and, as specified in paragraph 14B, remove the contingency or cancel this Agreement. Buyer shall give Seller, at no cost, complete Copies of all Buyer Investigation reports obtained by Buyer. Seller shall make the Property available for all Buyer Investigations. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)

Reviewed by _____ Date _____

RPA-CA REVISED 10/02 (PAGE 3 OF 8)



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 3 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 6 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)

Property Address: _____

Date: _____

10. **REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of receipts and statements to Buyer prior to final verification of condition.
11. **BUYER INDEMNITY AND SELLER PROTECTION FOR ENTRY UPON PROPERTY:** Buyer shall: (i) keep the Property free and clear of liens; (ii) Repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
12. **TITLE AND VESTING:**
- A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary (title) report, which is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the preliminary report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
- C. Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- E. Buyer shall receive a CLTA/ALTA Homeowner's Policy of Title Insurance. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and pay any increase in cost.
13. **SALE OF BUYER'S PROPERTY:**
- A. This Agreement is NOT contingent upon the sale of any property owned by Buyer.
- OR B. ☐ (If checked): The attached addendum (C.A.R. Form COP) regarding the contingency for the sale of property owned by Buyer is incorporated into this Agreement.
14. **TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph must be in writing (C.A.R. Form CR).
- A. **SELLER HAS:** 7 (or ☐ _____) Days After Acceptance to deliver to Buyer all reports, disclosures and information for which Seller is responsible under paragraphs 4, 5A and B, 6A, 7B and 12.
- B. (1) **BUYER HAS:** 17 (or ☐ _____) Days After Acceptance, unless otherwise agreed in writing, to:
- (i) complete all Buyer Investigations; approve all disclosures, reports and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property (including lead-based paint and lead-based paint hazards as well as other information specified in paragraph 5 and insurability of Buyer and the Property); and
- (ii) return to Seller Signed Copies of Statutory and Lead Disclosures delivered by Seller in accordance with paragraph 5A.
- (2) Within the time specified in 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests.
- (3) By the end of the time specified in 14B(1) (or 2I for loan contingency or 2J for appraisal contingency), Buyer shall, in writing, remove the applicable contingency (C.A.R. Form CR) or cancel this Agreement. However, if the following inspections, reports or disclosures are not made within the time specified in 14A, then Buyer has 5 (or ☐ _____) Days after receipt of any such items, or the time specified in 14B(1), whichever is later, to remove the applicable contingency or cancel this Agreement in writing: (i) government-mandated inspections or reports required as a condition of closing; or (ii) Common Interest Disclosures pursuant to paragraph 6B.
- C. **CONTINUATION OF CONTINGENCY OR CONTRACTUAL OBLIGATION; SELLER RIGHT TO CANCEL:**
- (1) **Seller right to Cancel; Buyer Contingencies:** Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit if, by the time specified in this Agreement, Buyer does not remove in writing the applicable contingency or cancel this Agreement. Once all contingencies have been removed, failure of either Buyer or Seller to close escrow on time may be a breach of this Agreement.
- (2) **Continuation of Contingency:** Even after the expiration of the time specified in 14B(1), Buyer retains the right to make requests to Seller, remove in writing the applicable contingency or cancel this Agreement until Seller cancels pursuant to 14C(1). Once Seller receives Buyer's written removal of all contingencies, Seller may not cancel this Agreement pursuant to 14C(1).
- (3) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit for any of the following reasons: (i) if Buyer fails to deposit funds as required by 2A or 2B; (ii) if the funds deposited pursuant to 2A or 2B are not good when deposited; (iii) if Buyer fails to provide a letter as required by 2G; (iv) if Buyer fails to provide verification as required by 2H or 2L; (v) if Seller reasonably disapproves of the verification provided by 2H or 2L; (vi) if Buyer fails to return Statutory and Lead Disclosures as required by paragraph 5A(2); or (vii) if Buyer fails to sign or initial a separate liquidated damage form for an increased deposit as required by paragraph 16. **Seller is not required to give Buyer a Notice to Perform regarding Close of Escrow.**
- (4) **Notice to Buyer To Perform:** The Notice to Buyer to Perform (C.A.R. Form NBP) shall: (i) be in writing; (ii) be signed by Seller; and (iii) give Buyer at least 24 (or ☐ _____) hours (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform may not be given any earlier than 2 Days Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel this Agreement or meet a 14C(3) obligation.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)

Reviewed by _____ Date _____

RPA-CA REVISED 10/02 (PAGE 4 OF 8)



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 8)
 CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 8)
 CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 6 OF 8)
 CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 8)
 CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)

Property Address: _____

Date: _____

- D. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES**: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for inability to obtain financing.
- E. **EFFECT OF CANCELLATION ON DEPOSITS**: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, less fees and costs, to the party entitled to the funds. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. **Release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award. A party may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**
15. **FINAL VERIFICATION OF CONDITION**: Buyer shall have the right to make a final inspection of the Property within 5 (or _____) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 7A; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement.
16. **LIQUIDATED DAMAGES**: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award.
BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION FOR ANY INCREASED DEPOSIT. (C.A.R. FORM RID)

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

17. **DISPUTE RESOLUTION**:
- A. **MEDIATION**: Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Paragraphs 17B(2) and (3) below apply whether or not the Arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**
- B. **ARBITRATION OF DISPUTES**: (1) Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 17B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. The parties shall have the right to discovery in accordance with California Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part III of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.
- (2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION**: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in California Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.
- (3) **BROKERS**: Buyer and Seller agree to mediate and arbitrate disputes or claims involving either or both Brokers, consistent with 17A and B, provided either or both Brokers shall have agreed to such mediation or arbitration prior to, or within a reasonable time after, the dispute or claim is presented to Brokers. Any election by either or both Brokers to participate in mediation or arbitration shall not result in Brokers being deemed parties to the Agreement.
- "NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**
- "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

Buyer's Initials (____)(____)

Seller's Initials (____)(____)

Reviewed by _____ Date _____



18. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
19. **WITHHOLDING TAXES:** Seller and Buyer agree to execute any instrument, affidavit, statement or instruction reasonably necessary to comply with federal (FIRPTA) and California withholding Law, if required (C.A.R. Forms AS and AB).
20. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
21. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
22. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 17A.
23. **SELECTION OF SERVICE PROVIDERS:** If Brokers refer Buyer or Seller to persons, vendors, or service or product providers ("Providers"), Brokers do not guarantee the performance of any Providers. Buyer and Seller may select ANY Providers of their own choosing.
24. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
25. **OTHER TERMS AND CONDITIONS,** including attached supplements:
- A. ☒ Buyer's Inspection Advisory (C.A.R. Form BIA)
- B. ☐ Purchase Agreement Addendum (C.A.R. Form PAA paragraph numbers: _____)
- C. _____
26. **DEFINITIONS:** As used in this Agreement:
- A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by a party and is delivered to and personally received by the other party or that party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. **"Agreement"** means the terms and conditions of this accepted California Residential Purchase Agreement and any accepted counter offers and addenda.
- C. **"C.A.R. Form"** means the specific form referenced or another comparable form agreed to by the parties.
- D. **"Close Of Escrow"** means the date the grant deed, or other evidence of transfer of title, is recorded. If the scheduled close of escrow falls on a Saturday, Sunday or legal holiday, then close of escrow shall be the next business day after the scheduled close of escrow date.
- E. **"Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.
- F. **"Days"** means calendar days, unless otherwise required by Law.
- G. **"Days After"** means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59PM on the final day.
- H. **"Days Prior"** means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. **"Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other.
- J. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- K. **"Notice to Buyer to Perform"** means a document (C.A.R. Form NBP), which shall be in writing and Signed by Seller and shall give Buyer at least 24 hours (or as otherwise specified in paragraph 14C(4)) to remove a contingency or perform as applicable.
- L. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- M. **"Signed"** means either a handwritten or electronic signature on an original document, Copy or any counterpart.
- N. **Singular and Plural** terms each include the other, when appropriate.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)

Reviewed by _____ Date _____



RPA-CA REVISED 10/02 (PAGE 6 OF 8)

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 6 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 8)

RPA-CA REVISED 10/02 (PAGE 8 OF 8)

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)

BUYER'S INSPECTION ADVISORY (BIA) (RPA-CA PAGE 6 OF 8)

Property Address: _____

Date: _____

27. AGENCY:-

- A. DISCLOSURE:** Buyer and Seller each acknowledge prior receipt of C.A.R. Form AD "Disclosure Regarding Real Estate Agency Relationships."
- B. POTENTIALLY COMPETING BUYERS AND SELLERS:** Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer-broker agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties of interest to this Buyer.
- C. CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:
Listing Agent _____ (Print Firm Name) is the agent
of (check one): ☐ the Seller exclusively; or ☐ both the Buyer and Seller.
Selling Agent _____ (Print Firm Name) (if not same
as Listing Agent) is the agent of (check one): ☐ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the
Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

28. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

- A.** The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 2, 4, 12, 13B, 14E, 18, 19, 24, 25B and C, 26, 28, 29, 32A, 33 and paragraph D of the section titled Real Estate Brokers on page 8. If a Copy of the separate compensation agreement(s) provided for in paragraph 29 or 32A, or paragraph D of the section titled Real Estate Brokers on page 8 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow.
- B.** A Copy of this Agreement shall be delivered to Escrow Holder within 3 business days after Acceptance (or ☐ _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement.
- C.** Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraphs 29, 32A and paragraph D of the section titled Real Estate Brokers on page 8. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraphs 29 and 32A, respectively, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Escrow Holder shall immediately notify Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- D.** A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 2 business days after mutual execution of the amendment.
- 29. BROKER COMPENSATION FROM BUYER:** If applicable, upon Close Of Escrow, Buyer agrees to pay compensation to Broker as specified in a separate written agreement between Buyer and Broker.
- 30. TERMS AND CONDITIONS OF OFFER:**

This is an offer to purchase the Property on the above terms and conditions. All paragraphs with spaces for initials by Buyer and Seller are incorporated in this Agreement only if initialed by all parties. If at least one but not all parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

Buyer's Initials (____)(____)
Seller's Initials (____)(____)

Reviewed by _____ Date _____



RPA-CA REVISED 10/02 (PAGE 7 OF 8)

BUYER'S COPY

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 8)

The System for Success

360 South High Avenue, Los Angeles, California 90058

RPA-CA REVISED 10/02 (PAGE 8 OF 8)

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)
BUYER'S INSPECTION ADVISORY (BIA PAGE 2 OF 2)

EQUAL HOUSING OPPORTUNITY

31. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit shall be returned unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____, who is authorized to receive it by 5:00 PM on the third calendar day after this offer is signed by Buyer (or, if checked, ☐ by _____ (date), at _____ AM/PM).

Date _____ Date _____

BUYER _____ BUYER _____

(Print name) (Print name)

(Address)

32. BROKER COMPENSATION FROM SELLER:

A. Upon Close Of Escrow, Seller agrees to pay compensation to Broker as specified in a separate written agreement between Seller and Broker.

B. If escrow does not close, compensation is payable as specified in that separate written agreement.

33. **ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to deliver a Signed Copy to Buyer.

☐ (If checked) **SUBJECT TO ATTACHED COUNTER OFFER, DATED** _____

Date _____ Date _____

SELLER _____ SELLER _____

(Print name) (Print name)

(Address)

(Initials) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____ AM/PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

B. Agency relationships are confirmed as stated in paragraph 27.

C. If specified in paragraph 2A, Agent who submitted the offer for Buyer acknowledges receipt of deposit.

D. **COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow: (i) the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS; or (ii) ☐ (if checked) the amount specified in a separate written agreement (C.A.R. Form CBC) between Listing Broker and Cooperating Broker.

Real Estate Broker (Selling Firm) _____

By _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) _____

By _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), counter offer numbers _____ and _____

_____, and agrees to act as Escrow Holder subject to paragraph 28 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is _____

Escrow Holder _____ Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder is licensed by the California Department of ☐ Corporations, ☐ Insurance, ☐ Real Estate. License # _____

(Initials) **REJECTION OF OFFER:** No counter offer is being made. This offer was reviewed and rejected by Seller on (Seller's Initials) _____ (Date) _____

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)

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The System for Success™

525 SOUTH VIRGIL AVENUE, LOS ANGELES, CALIFORNIA 90020

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BUYER'S INSPECTION ADVISORY (BIA PAGE 2 OF 2)



Property Address: _____ ("Property").

A. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. For this reason, you should conduct thorough investigations of the Property personally and with professionals who should provide written reports of their investigations. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.

B. BUYER RIGHTS AND DUTIES: You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. The purchase agreement gives you the right to investigate the Property. If you exercise this right, and you should, you must do so in accordance with the terms of that agreement. This is the best way for you to protect yourself. It is extremely important for you to read all written reports provided by professionals and to discuss the results of inspections with the professional who conducted the inspection. You have the right to request that Seller make repairs, corrections or take other action based upon items discovered in your investigations or disclosed by Seller. If Seller is unwilling or unable to satisfy your requests, or you do not want to purchase the Property in its disclosed and discovered condition, you have the right to cancel the agreement if you act within specific time periods. If you do not cancel the agreement in a timely and proper manner, you may be in breach of contract.

C. SELLER RIGHTS AND DUTIES: Seller is required to disclose to you material facts known to him/her that affect the value or desirability of the Property. However, Seller may not be aware of some Property defects or conditions. Seller does not have an obligation to inspect the Property for your benefit nor is Seller obligated to repair, correct or otherwise cure known defects that are disclosed to you or previously unknown defects that are discovered by you or your inspectors during escrow. The purchase agreement obligates Seller to make the Property available to you for investigations.

D. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as soil stability, geologic or environmental conditions, hazardous or illegal controlled substances, structural conditions of the foundation or other improvements, or the condition of the roof, plumbing, heating, air conditioning, electrical, sewer, septic, waste disposal, or other system. The only way to accurately determine the condition of the Property is through an inspection by an appropriate professional selected by you. If Broker gives you referrals to such professionals, Broker does not guarantee their performance. You may select any professional of your choosing. In sales involving residential dwellings with no more than four units, Brokers have a duty to make a diligent visual inspection of the accessible areas of the Property and to disclose the results of that inspection. However, as some Property defects or conditions may not be discoverable from a visual inspection, it is possible Brokers are not aware of them. If you have entered into a written agreement with a Broker, the specific terms of that agreement will determine the nature and extent of that Broker's duty to you. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**

E. YOU ARE ADVISED TO CONDUCT INVESTIGATIONS OF THE ENTIRE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- 1. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof, plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa, other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property. (Structural engineers are best suited to determine possible design or construction defects, and whether improvements are structurally sound.)
- 2. SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. (Professionals such as appraisers, architects, surveyors and civil engineers are best suited to determine square footage, dimensions and boundaries of the Property.)
- 3. WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms and other infestation or infection. Inspection reports covering these items can be separated into two sections: Section 1 identifies areas where infestation or infection is evident. Section 2 identifies areas where there are conditions likely to lead to infestation or infection. A registered structural pest control company is best suited to perform these inspections.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)

Reviewed by _____ Date _____

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BUYER'S INSPECTION ADVISORY (BIA PAGE 1 OF 2)

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BUYER'S INSPECTION ADVISORY (BIA PAGE 2 OF 2)

Property Address: _____

Date: _____

4. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage. (Geotechnical engineers are best suited to determine such conditions, causes and remedies.)
5. **ROOF:** Present condition, age, leaks, and remaining useful life. (Roofing contractors are best suited to determine these conditions.)
6. **POOL/SPA:** Cracks, leaks or operational problems. (Pool contractors are best suited to determine these conditions.)
7. **WASTE DISPOSAL:** Type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
8. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components.
9. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants). (For more information on these items, you may consult an appropriate professional or read the booklets "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," "Protect Your Family From Lead in Your Home" or both.)
10. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood. (A Geologist or Geotechnical Engineer is best suited to provide information on these conditions.)
11. **FIRE, HAZARD AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies. (An insurance agent is best suited to provide information on these conditions.)
12. **BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. (Such information is available from appropriate governmental agencies and private information providers. Brokers are not qualified to review or interpret any such information.)
13. **RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants; and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements. (Government agencies can provide information about these restrictions and other requirements.)
14. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property. Compliance requirements differ from city to city and county to county. Unless specifically agreed, the Property may not be in compliance with these requirements. (Local government agencies can provide information about these restrictions and other requirements.)
15. **NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Shall not be responsible for identifying defects that are not known to Broker and (a) are not visually observable in reasonably accessible areas of the Property; (b) are in common areas; or (c) are off the site of the Property; (v) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vi) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (vii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (viii) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (ix) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyer is encouraged to read it carefully.

Buyer Signature _____

Date _____

Buyer Signature _____

Date _____

Seller Signature _____

Date _____

Seller Signature _____

Date _____

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